IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Appeal No. 1058/2001
(Old No. 2087 of 1981)

Nanda Ballabh and others .....Appellants

Versus

State of Uttaranchal .....Respondent

None appear for the appellants.
Sri K.S. Rautela brief holder for the State.

Hon'ble Irshad Hussain, J.

This is a criminal appeal under section 374 of the Code of Criminal Procedure (for short 'Code') against the judgment and order dated 4.9.1981 passed by the Sessions Judge, Almora in sessions trial no. 16/1980 convicting and sentencing the appellants to undergo RI for a period of three years under section 452 IPC; for a period of one year each under sections 354 & 342 IPC and for a period of two year under section 120(B)(1) of the IPC.

2. The case of the prosecution, in brief, was that on 8.7.1979 Bhuwan Chandra (PW-4)-the minor son of complainant-Smt. Chanuli Devi (PW-3) was assaulted by appellant-Mathura Datt in village Jajar, Patti Darun, Khestra Mayoli, District Almora. When Smt. Chanuli Devi (PW-3) returned home from her filed, Bhuwan Chandra (PW-4) reported the matter to her at about 9 PM. Then the complainant-Smt. Chaunali Devi called Mathura Datt and reprimanded him for assaulting her son. The appellant-Mathura Datt got enraged and even gave out threat that he will beat her also. The said appellant in order to achieve his intended design started climbing the staircase of the house of the complainant. Seeing this, he was pushed off by the complainant as a result of which the said appellant fell down and sustained injury. He pretended that he had died as a result of injury whereupon other appellants also appeared there. The appellants than tied her with a rope inspite of her protests and even deprived of her wearing ornaments.

3. It is also the case of the prosecution that the matter was brought to the notice of the village Sabhapatti also named as Mathura Datt, who came there at the scene of the occurrence and believing the version as given by the appellants as true scolded the complainant for assault which she made on appellant-

Mathura Datt. A writing was obtained from the complainant admitting her guilt for which she was also fined Rs.100. The things were settled as such.

4. It is also the case of the prosecution that the complainant thereafter sent telegram to her husband-Jamuna Datt (PW-1), who was in Punjab to earn his livelihood. He responded to the call and came back to his village. On his return, a written report (Ex.Ka.1) was prepared on 19.7.1979 and it was submitted to the District Magistrate, Almora. The District Magistrate directed the revenue official to investigate and report the matter. Thereafter, a formal check FIR (Ex.Ka.3) was also registered on 19.8.1979 and after investigation of the case the chargesheet was submitted against these appellants. The Magistrate concerned took cognizance of the offence against them and they were sent up to stand trial for the offence under Sections 120(B)(1), 354, 452, 342 and 395 IPC. The charges against these appellants were framed under these Sections by the Sessions Judge, Almora in sessions trial no. 16/1980.

5. The prosecution in order to bring home guilt to the appellants examined as many as seven witnesses out of which the complainant-Chanuli Devi (PW-3) and her son-Bhuwan Chandra (PW-4) are the main witnesses of the prosecution case. Two other witnesses, namely, Chandra Mani (Pw-2) and Dharmanand (PW-6) were also produced as witnesses of looting of the property. Jamuna Datt (PW-1) is the husband of the complainant and Dr. A.K. Sharma (PW-5) was examined to prove the injury report of the complainant. In the first instance, it shall be desirable to reproduce the medical evidence here.

6. Smt. Chanuli Devi was medically examined on 21.8.1979 by Dr. A.K. Sharma (PW-4) and following injuries were detected on her:-

(i) Two healed linear scars, 6 cm above the left elbow, on the back of the left arm, size 5 cm and 6 cm in the length with a gap of 1 cm, parallel to each other; horizontal in direction.

(ii) Two healed linear scars, on the outer side of right arm, 6 cm above the right elbow, size 5cm and 7.5cm in the length with a gap of 1.5cm parallel to each other, horizontal in direction.

(iii) Healed linear scar on the back of left forearm 7cm above left waist, size 2cm in length, horizontal in direction.

(iv) Healed scar linear, on the back of right forearm, outer side, 5cm above right wrist, size 2cm in length and horizontal in direction.

7. The medical officer gave evidence that these scars of injuries were the result of tieing by rope and at the time of the examination these were found about two months old. Learned Sessions Judge placing reliance on the evidence of the complainant and her son supported by the medical evidence came to the conclusion that the appellants have conspired to trespass into the house of the complainant and thereafter confined her and criminally assaulted her and they also used force with the intention to outrage her modesty. With these findings, the appellants were held guilty, convicted and sentenced as aforesaid.

8. I have gone through the material on record and considered the evidence of the case and have also gone through the impugned judgment with the help of the learned brief holder for the State. Having considered the evidence, the circumstances and the probabilities of the case, it need to be pointed out at the outset that the conclusions arrived at by the learned Sessions Judge were based on surmises and conjectures and that the evidence of the prosecution is not sufficient and cogent enough to bring home guilt to the appellants beyond reasonable doubt. Therefore, this appeal succeed and is to be allowed accordingly.

9. The reasons for the above conclusions are that in the first instance the learned Sessions Judge himself has not ruled out the possibility that the case set up by the prosecution was the result of an ample opportunity for consultation and deliberation between the alleged date of the occurrence and the date of filing of the report. As stated above, the occurrence took place on 8.7.1979 and the written report was filed after twelve days. The learned Sessions Judge has also disbelieved the evidence of the prosecution and, particularly, the statement of the complainant in regard to the commission of offence of dacoity by observing that positive improvements were made in order to show that offence of grievous nature had been committed by the appellants. Further, it is of significance that the incident took place mainly on account of the alleged assault of Bhuwan Chandra (PW-4) but no medical evidence was produced in order to prove that in fact it was so and that the minor boy was manhandled or

assaulted by one of the appellanat-Mathura Datt. Complainant herself was not the eyewitness of the assault of her son-Bhuwan Chandra and there was no corroborative evidence to show that on this issue the later incident took place and the complainant was assaulted in the manner as alleged by the prosecution.

10. It is the case of the prosecution itself that appellant-Mathura Datt had sustained injuries when he was pushed off the staircase by the complainant and as a result of this occurrence other appellants have also assembled there to reprimand the complainant and later on to assault her. This aspect of the matter run counter to the claim of the prosecution that the appellants have conspired to commit the offences alleged against them because if such incident had taken place with Mathura Datt, other appellants were not there and it appear that the appellants like other villagers came there when there was some commotion at the house of the complainant. Having gone through the statement of Chanuli Devi, it is abundantly clear that she had tried to make a mountain out of a mole hill by leveling allegations that the appellants assaulted her and wanted to outrage her modesty, although some minor incident took place involving the family members. Mathura Datt (DW-1) has produced the document which was prepared by way of compromise. It indicate that the appellant-Mathura Datt is the nephew of the complainant and it cannot be doubted that some minor incident took place and taking benefit of the same the complainant later on made false allegations after consultations and deliberations with her husband-Jamuna Datt, who had by then returned from Punjab.

11. In the face of the facts of the case and evidence as discussed above no reliance could have also been placed on the medical evidence by reason of the fact that the medical examination took place on 21.8.1979 and no explanation for the delay was put forward by the prosecution. It is strange that although written complaint was submitted on 20.7.1979 when the husband of the complaint had returned and medical examination was to be made then on that date itself. It appear that deliberately the medical examination was delayed by more than one and a half month from the date of alleged occurrence. On this account, the scars of injuries cannot be attributed to the alleged assault on the date of the occurrence. In my view, the medical evidence, therefore, cannot be taken to support the evidence of the complainant and the allegations against the appellants were not established beyond doubt.

13. The evidence of the prosecution thus falls much too short to prove the charges against the appellants beyond reasonable doubt. Therefore, the appellants deserve to be extended benefit of doubt and to be acquitted of the charges leveled against them.

14. The appeal is allowed. Conviction and sentence awarded to the appellants per judgment dated 4.9.1981 are set-aside. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.

Dated 08.04.2004 **(Irshad Hussain, J.)**

Rawat